

1. **PARTIES**

The Montana Department of Corrections (DEPARTMENT) and **Boyd Andrew Community Services (CONTRACTOR)** enter into this Contract (**07-016-ACCD**). The party's names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Adult Community Corrections Division
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

Boyd Andrew Community Services
PO Box 1153
Helena, MT 59624

(406) 443-2343

1.1 **Document Precedence**

RFP# 06-001-METH, as amended, CONTRACTOR'S initial response and Best and Final Offer, as amended/clarified, are hereby incorporated by reference and made a part of this Contract as if set forth in full herein. This Contract consists of, and precedence is established by, the order of the following documents incorporated into this Contract:

1. This Contract document;
2. CONTRACTOR'S Best and Final Offer, as amended/clarified by CONTRACTOR and accepted by DEPARTMENT;
3. CONTRACTOR'S response, as amended/clarified, to the Request For Proposals document (RFP# 06-001-METH); and
4. The Request for Proposals document (RFP# 06-001-METH), as amended.

CONTRACTOR shall notify DEPARTMENT in writing of any apparent conflict between the referenced documents. All apparent conflicts shall be resolved by the parties according to the considerations set forth herein.

Further, the parties agree that this contract may be subject to review by the Legislative Audit Division in accordance with section 53-1-203, MCA.

NOW THEREFORE, DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS AGREEMENT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. **DUTIES AND RESPONSIBILITIES OF CONTRACTOR**

As listed herein, and in accordance with CONTRACTOR'S response to RFP 06-001-METH, as amended, CONTRACTOR agrees to provide a structured, comprehensive, Residential Methamphetamine Treatment Program (Program) for offenders convicted of second or subsequent criminal possession of methamphetamine, and/or other offenders whom DEPARTMENT deems will benefit from the treatment program. Referrals will be screened and placed in the following order of priority:

- 1) Offenders convicted of second or subsequent criminal possession of methamphetamine as provided in 45-9-102(5) (a) MCA.
- 2) Offenders in need of structured treatment for chronic methamphetamine abuse.

- 3) Offenders in need of structured treatment for a stimulant use disorder that includes abuse of other amphetamines or cocaine.
- 4) Offenders in need of structured treatment for any form of chemical dependency and treatable co-occurring mental illness.

Eligible offenders within the above categories will include: DOC Commitments; parole violators; conditional release violators; MSP or MWP inmates; Regional Prison inmates; and sanctioned offenders.

The Program shall provide individual and group treatment utilizing the therapeutic community model for not less than nine (9) months duration (unless otherwise approved in writing by DEPARTMENT) along with aftercare linkages for Program completers. CONTRACTOR agrees to keep procedures or policies in place that are in accordance with current DEPARTMENT policies that are applicable to the Program and services provided under this Contract.

A. SCREENING

1. DEPARTMENT shall determine the initial eligibility of offenders it will refer to the Residential Methamphetamine Treatment Facility (Facility) for screening. Offenders of all criminal backgrounds will be considered for placement.
2. CONTRACTOR shall establish a local screening committee that shall include, at a minimum: a local law enforcement officer; a probation and parole officer; and a member of the public. The committee will convene as a group, in person, or via conference call or web cam, met net, etc., so that all persons participating in the meeting can hear each other at the same time, to consider and accept or deny referrals within ten (10) working days of the referral's receipt. At each screening meeting, the committee must discuss each offender referral and report to DEPARTMENT in writing, the committee's results. After due consideration and discussion, the committee must decide to admit or deny an offender through mutual agreement by a majority of committee members. The screening committee shall have the final determination regarding the admission of any candidate to the center. Each committee member shall have one vote. In the case of a tie vote, the center administrator will cast a vote to break the tie.
3. If the committee decides to deny an offender admission to the Facility the committee must in writing, specify the reasons for the denial. The committee may deny an offender admission only for the following reasons:
 - a. The offender presents an unacceptable level of risk of harm to other offenders in the Facility, staff, or self;
 - b. The offender presents an unacceptable level of risk of escape;
 - c. The offender cannot fulfill the program obligations. The committee and CONTRACTOR may not discriminate against an offender on the basis of the offender's mental or medical condition, but may deny admission to an offender that, due to one of these conditions, cannot fulfill program objectives with reasonable accommodation;
 - d. The offender has insufficient time remaining on his/her sentence to complete the

- program;
- e. The offender has committed a sexual or violent offense in the local community where the Program is located;
 - f. The file material submitted was incomplete (note specifically what is missing).
 - g. Other penological reasons (must specifically note what these are).
4. CONTRACTOR will submit an electronic report (e-mail) to the Contract Programs Manager within three (3) business days after the screening committee meets. The report must outline all offenders that the committee screened and for each one indicate:
- a. The referral source;
 - b. Whether the committee accepted or denied the offender;
 - c. If the committee denied the offender, the reason for the denial;
 - d. If screening was not completed within ten (10) working days, the report must indicate the reason the screening took longer than ten (10) working days to complete.
5. DEPARTMENT may not transfer an offender to the Facility until CONTRACTOR has provided notice of acceptance of the offender.
6. CONTRACTOR will arrange an annual meeting between DEPARTMENT staff and screening committee members, and a separate annual meeting between DEPARTMENT staff and CONTRACTOR'S Board of Directors, to discuss relevant issues of concern.
7. DEPARTMENT will release the following non-confidential information to the screening committee:
- a. Information, Judgments, and Sentence Review Decisions;
 - b. Initial Board of Pardons and Parole Report and Disposition;
 - c. Probation and Parole Bureau Violation Reports;
 - d. Department of Corrections' Basic Information Sheet;
 - e. Department of Corrections' Initial Classification Summary and Report;
 - f. Department of Corrections' Summary of Offender's Institutional Conduct.
8. An offender who wants to be considered for placement must execute appropriate releases so DEPARTMENT can release appropriate confidential information such as Medical, psychological, and treatment information necessary to evaluate the offender's ability to complete the program; and, information necessary to evaluate the offender's needs for transitional services. DEPARTMENT will obtain all releases and information and

provide it to CONTRACTOR.

B. OFFENDER REPORTS

1. If an offender's stay at the Facility extends beyond a nine (9) month period, CONTRACTOR must submit monthly progress reports to DEPARTMENT until the offender is released or terminated from the program. DEPARTMENT reserves the right to request more frequent progress reports on offenders that aren't progressing at an acceptable rate.
2. CONTRACTOR will submit reports to the Contract Programs Manager.
3. CONTRACTOR shall maintain progress notes on all offenders. Progress notes will provide documentary evidence of person-to-person services provided to the offender; document progress the offender makes in attaining goals, and record modifications to the offender's individualized treatment plan and the reasons for such modification.
4. CONTRACTOR shall complete a discharge summary within ten (10) working days of an offender's release or termination from the program and submit copies to the Contract Programs Manager and the receiving facility, or in the case of offenders being released to supervision, the Probation and Parole Office that will supervise the offender. A copy of this report will also be forwarded to the MSP/MWP Classification Bureau. The discharge summary will include: progress and final placement within current ASAM placement criteria; an account of the offender's response to treatment; a review of the individualized treatment plan and corresponding progress; resolution of identified problems; specific foundation errors and core beliefs identified and addressed; progress in specialty groups and classes attended; and treatment overview, concerns, and continuum of care recommendations, including an individualized aftercare plan. CONTRACTOR shall retain all original reports in the offenders' records.

C. HEALTH SERVICES

1. General

CONTRACTOR shall provide offenders with health care services, including: medical, psychiatric, dental, optometric, pharmaceutical, psychological and other medical-related services. These services must meet ACA and NCCHC standards, federal, state and local laws and regulations, and DOC policies and procedures.

DOC will require CONTRACTOR to implement and follow DOC offender medical co-payment procedures as provided in its most comparable facility. Contractor must have policies in place to ensure that a portion of "incentive" monies paid to offenders will be used to offset co-pay costs. Offender revenues generated for medical expenses, other than incentive pay, will be reimbursed to the DOC. In keeping with operational efficiencies and to reduce exposure to security risk, CONTRACTOR must ensure that as much as is possible, health services will be made available on-site at the Facility.

2. Health Care Costs

CONTRACTOR shall be responsible for the cost of providing all on-site health care services, including medical, dental, psychiatric, and specialty clinics. CONTRACTOR is additionally responsible for the cost and provision of all medically related transportation, both routine and emergency, for off-site services. CONTRACTOR will be responsible for the first one thousand dollars (\$1,000.00) of all off-site health related services (as identified in 1 above) per offender per state fiscal year (July 1 to June 30). Medical expenses resulting from the negligence or willful misconduct of CONTRACTOR, subcontractor, its officers, agents, volunteers or employees, shall be borne by CONTRACTOR.

DEPARTMENT will be responsible for off-site health related charges that exceed the initial amount established as the per contract year offender deductible. All copies of provider invoices submitted to DEPARTMENT for payment must be itemized with sufficient detail to justify the balance owed by DEPARTMENT. CONTRACTOR shall initiate and maintain cost reduction contracts with hospital(s) and off-site specialty providers, which are local to the Facility. CONTRACTOR must utilize a managed care service to certify all hospital inpatient admissions.

3. Nursing Services

CONTRACTOR shall provide RN/LPN nursing coverage, 16 hours a day, 7 days a week. CONTRACTOR shall have a designated RN supervisor [on-site] 40 hours per week. Offenders shall be provided access to emergency medical, dental, and mental health care 24 hours a day.

4. Dental Services

CONTRACTOR shall provide offenders with routine dental services including, but not limited to, examinations, hygiene education, relief of pain and infection, extractions, and fillings.

5. Medications

CONTRACTOR shall order, provide, and administer all offender medications. All prescribed medications shall be obtained through the DOC pharmacy management contractor (currently Diamond Pharmacy). CONTRACTOR shall be financially responsible for the costs of over-the-counter (OTC) medications and DEPARTMENT will be financially responsible for the costs of all, pre-approved, formulary medications obtained through Diamond Pharmacy.

6. Mental Health Services

Mental health services shall be available, as needed, 24 hours per day, 7 days per week.

7. Examinations

Physical examinations of each offender shall be completed within 14 days of offender arrival at the Facility.

8. Daily Triage of Health care Requests (HCR)

Offenders referred for primary care physician services shall be seen within seven (7) calendar days of the referral – after assessment by nursing staff.

9. Sick Call

Appropriate medical staff shall provide sick call daily.

10. Off-site Specialty Services

CONTRACTOR is responsible for the arrangement and referral of off-site specialty services. When accessing these services, CONTRACTOR will be required to use the medical provider network as outlined in the DOC contract for Third Party Claims Administration. CONTRACTOR must provide continuous security of offenders at an off-site medical facility. Offenders shall not be left unattended at any time. CONTRACTOR shall be responsible for the first 72 hours of off-site security. DEPARTMENT shall be responsible after 72 hours.

11. First Aid Equipment

The Facility must have first aid equipment available at all times for medical emergencies. Equipment must comply with local, state, and NCCHC standards. Staff trained in emergency first aid procedures, including cardio-pulmonary resuscitation, must be present on each shift.

State licensing and certification requirements must apply to health care personnel working in the Facility to the same extent as they apply to equivalent personnel in the community. CONTRACTOR must make provisions for medical evaluation of any employee or offender suspected of a communicable disease and/or exposure to potentially infectious bacteria.

12. Prior Written Approval

CONTRACTOR shall obtain prior written approval [from DOC] of all scheduled inpatient hospitalization and surgery. Unapproved inpatient hospitalization and surgery costs will be the responsibility of CONTRACTOR.

13. Possession of Prescribed/OTC Medications

The Facility must maintain written policies regarding the possession and use of controlled substances and prescribed/OTC medications. The policies must stipulate that prescribed medications are administered according to the directions of the prescribing professionals. Policy and procedure must specify that the records of all medications distributed by Facility staff will be maintained and audited monthly, and include the date, time and name of the offender's that receive medication, and the name of the medical staff distributing medications. DOC will provide health history records, if available. Non-medical staff must

be informed of an offenders' special medical problems within the boundaries of medical confidentiality. CONTRACTOR must keep all records current at all times, returning them to DOC when offender is returned to a DEPARTMENT facility.

14. Notification of Next of Kin

The Facility must maintain written policies and procedures for the prompt notification of an offender's next of kin and the DOC in case of serious illness, surgery, injury or death. Any death must be reported immediately to the proper officials as specified in DOC Policy 4.5.34, Offender Death. A post-mortem examination of all offenders that die while in the custody of CONTRACTOR will be conducted at DEPARTMENT expense pursuant to 46-4-122(2) (a), MCA.

15. Informed Consent

In accordance with DOC Policy 4.5.31, Informed Consent, CONTRACTOR'S medical staff shall obtain written informed consent from offenders before an offender receives health care treatment. CONTRACTOR shall afford offenders the right to refuse treatment consistent with DOC Policy 4.5.32, Right to Refuse Medical Treatment.

16. Suicide Prevention

CONTRACTOR shall implement suicide prevention plans, including appropriate seclusion and/or restraint protocols according to a policy approved in advance by the DOC.

17. Quality Assurance Program (QAP)

CONTRACTOR shall implement a Quality Assurance Program for health services provided to offenders. The QAP shall address: 1) quarterly clinical chart reviews of a at least five percent (5%) of all offender health records; 2) annual reviews of access to care, screenings, health assessments, continuity of care, emergency care, hospitalizations, and adverse offender occurrences (including all deaths); and, 3) provide for an annual review of the effectiveness of the Quality Assurance Program.

CONTRACTOR shall submit relevant QAP information to DEPARTMENT staff, upon request.

18. Cost Containment

CONTRACTOR shall implement a detailed plan for operation of a Cost Containment Program designed to control health care costs. CONTRACTOR must indicate the methods to be used for data collection and to analyze trends in the utilization and cost of health services. CONTRACTOR shall submit utilization reports and cost containment information to DEPARTMENT staff, upon request.

D. PROGRAMMING & COUNSELING

1. Within ten (10) working days of an offender's entry into the program, CONTRACTOR shall commence an individualized treatment plan for the offender that shall be reviewed and

updated every two (2) weeks thereafter. The plan must describe the offender's treatment, vocational, educational, behavioral and psychosocial needs and treatment goals. CONTRACTOR will conduct on-going re-assessment to ensure that offenders receive an appropriate level of treatment and services. DEPARTMENT realizes that offenders will progress at different rates based on severity of symptoms and cognitive impairments from drug use. Because of the different rates of progress that offenders demonstrate, CONTRACTOR must assess [on a regular basis] each offender's ability to receive and process information and lingering cognitive deficits. All assessment tools will be submitted to DEPARTMENT for review and approval prior to implementation or upon revision by CONTRACTOR. The offender's individualized program will include measurable criteria of expected behavior and accomplishments, a time schedule for achieving specific goals, and scheduled progress reviews. Offenders' individualized programs must be set forth in writing and signed by the offender and staff. Offenders will be subject to phase progression criteria as outlined in the CONTRACTOR'S response to the RFP, which will include the following phases:

- Phase I – Orientation to the Therapeutic Community
 - Phase II – Methamphetamine Education and Treatment
 - Phase III – Relapse Prevention and Transfer Planning
2. Upon completion of the Residential Methamphetamine Treatment Program, offenders will enter and complete a community prerelease center program for a duration of six (6) months, depending on the offenders' individual circumstances to fulfill this requirement. CONTRACTOR shall develop an individualized written aftercare/transition plan for each offender in conjunction with the receiving agency and DEPARTMENT Probation & Parole staff. The aftercare/transition plan shall include: specifically outlined participation in 12-step groups; regular contact with a sponsor; designation and referral to an aftercare provider; relapse intervention and prevention plans with identification of possible support systems; employment; educational plans; leisure activities; medical and mental health concerns; personal relapse triggers and negative, self-directed behaviors with skills that will be used to counteract these issues and potential legal and/or family issues. Dependent upon individual needs, participation in an aftercare program could last from 6 to 12 months following release from the Program.

As part of an offender's successful transition to the receiving facility or other community setting, CONTRACTOR must develop positive relationships and strong linkages with prerelease centers, community chemical dependency programs, and State Probation and Parole, to ensure continuity of care and services.

3. CONTRACTOR must offer an active program schedule of services for up to 8-10 hours per day. Programming shall include, but not be limited to:
- Therapy - individual and group counseling and services in substance abuse and relapse prevention; and, mental health and co-occurring disorders. Therapy shall be gender and culturally specific. Family, relationship, and trauma counseling shall be provided whenever possible and appropriate.
 - Educational Activities - employment and skill-building; education in the physical, mental, and environmental effects of methamphetamine use; GED preparation and vocational programs; parenting; financial management; and, conduct rules, responsibilities, and expectations of offenders in prerelease centers and probation and parole. Educational components will be developed with the impaired

methamphetamine user in mind and shall include a mixture of video, interactive presentations, brief lectures, and materials that do not require considerable reading.

- Cognitive Principles & Restructuring (CP&R) - CONTRACTOR shall follow DEPARTMENT CP&R Facilitator's Manual and guidelines for completion of Phases I, II and III. Offenders will be permitted to enter Phase I, II, or III groups within thirty (30) calendar days of their arrival to the Facility, unless clinical concerns preclude this. Offenders will be permitted to discontinue CP&R upon completion of Phase II or Relapse Phase III requirements. All CP&R groups will be scheduled to allow offender completion within a nine (9) month time period. Other forms of cognitive behavioral therapy may be used, such as Dialectical Behavioral Therapy (DBT), with DEPARTMENT approval.
- Contingency Management/Incentives – CONTRACTOR will develop an incentive program for offenders to reward progress and positive behaviors in treatment.

CONTRACTOR will submit a biannual report to DEPARTMENT, which outlines current programming available to offenders within the Facility, and programming available through contracts with community resources. CONTRACTOR will post, maintain, and periodically update a directory of community agencies available to assist offenders or will use a directory that is maintained and updated by another agency.

4. CONTRACTOR must utilize a standardized and objective assessment that determines level of risk and need factors associated with recidivism. CONTRACTOR will ensure an ongoing comprehensive assessment process for each program participant. Assessments must include and address the following:
 - Medical history, physical exam and laboratory work (i.e. CBC, Chemical Profile)
 - Substance Abuse Assessment
 - Mental Health Assessment/ Identification of apparent cognitive deficits
 - Identification of risk factors
5. CONTRACTOR shall incorporate an objective method (such as LSI-R) approved by DEPARTMENT staff by which offenders are assessed at the beginning and end of the program to measure changes in attitude/behavior. Indicators will be identified to assist program staff in monitoring offender's progress during and following program participation.
6. CONTRACTOR shall ensure that program staff document all scheduled meetings with offenders, in writing, subject to review by DEPARTMENT. Documentation should note the offender's progress in attaining goals relative to their individualized program, identified needs, and any other pertinent issues.

E. OFFENDER MISCONDUCT & REMOVAL FROM FACILITY

1. CONTRACTOR shall provide to each offender at orientation a written agreement setting forth all rules, conditions, and procedures governing the offender's residency at the Facility.
2. Disciplinary Procedures
 - a. Pursuant to DOC 3.4.1, Adult Institutional Discipline and P&P 140-1, Adult

Offender Discipline and Disciplinary Hearings (attached and incorporated herein by reference), if offender is alleged to have violated his/her residency agreement or rules of the Facility, CONTRACTOR shall serve the offender with written notice of the allegation and immediately forward a copy to the Probation & Parole Officer II or designee assigned to conduct hearings for the Facility (“hearing officer”).

- b. In accordance with DOC 3.4.1, Adult Institutional Discipline and P&P 140-1, Adult Offender Discipline and Disciplinary Hearings, CONTRACTOR may handle Class II violations internally, subject to consultation with a hearing officer prior to finalizing a disciplinary decision. CONTRACTOR agrees to forward all Class I violations to the hearing officer. All violation codes used by CONTRACTOR will be consistent with established DEPARTMENT guidelines.
- c. Hearings will be held as soon as is reasonably possible. Priority will be placed on offenders that are incarcerated. The hearings officer shall conduct a hearing to determine whether the allegation is true, and if so, whether to impose a penalty, including whether the offender should remain in the Facility. The hearing officer shall then provide a written disposition to the offender, including, if applicable, the reasons for removal of the offender from the program. CONTRACTOR will submit a monthly report to DEPARTMENT, outlining all offenders that have received class I and II violations hearings held that month and the disposition of each hearing.
- d. If the hearing results in a decision to terminate the offender’s participation in the Program, CONTRACTOR shall complete a termination report and forward it to the Contract Programs Manager and the MSP or MWP Classification Bureau.
- e. An offender or CONTRACTOR may appeal the decision of the hearing officer to the Community Corrections Division Administrator (also referred to as the appeal hearing officer), or designee. The appeal hearing officer will review the decision to determine if the appropriate procedure was followed in the disciplinary matter and if appropriate findings of fact were made. The appeal hearing officer will also review the hearing disposition. The standard of review will be whether facility staff clearly did not follow appropriate procedure in the disciplinary matter or that the findings of fact were clearly erroneous. If the appeal hearing officer determines the findings of fact were clearly erroneous or the facility staff clearly did not follow appropriate procedure in the disciplinary matter, the appeal hearing officer may reinstate the offender and CONTRACTOR agrees to reinstate the offender at the Facility at the next available opening. If the appeal hearing officer determines the disposition is not proportionate to the offense, or if through the appeal process it is determined that the offender should be reinstated contrary to the recommendation of CONTRACTOR, CONTRACTOR may appeal the decision of the appeal hearing officer by submitting a letter articulating the reasons for the appeal and stating why a placement back to CONTRACTOR’S facility is not appropriate. This letter must be submitted within seven (7) working days following the hearing. The appeal hearing officer has thirty (30) calendar days to make a ruling on this appeal. If the appeal hearing officer still believes the offender should be reinstated contrary to the recommendation of

CONTRACTOR, CONTRACTOR must re-screen the offender through the local screening committee according to the terms of this Contract. During the screening process, the offender will remain in the custody of DEPARTMENT until a determination is made by the committee. If deemed appropriate, subject to screening and approval procedures, the Adult Community Corrections Division Administrator may also recommend placement of an offender in an alternative placement.

3. Detention

- a. A Probation & Parole Officer II, or other designee of DEPARTMENT, may authorize an offender's placement for a specified duration in a county detention center if such placement is necessary to control an offender's threatening or harmful behavior. If CONTRACTOR is unable to contact the PO II or designee, CONTRACTOR may place the offender in a county detention center pursuant to a pre-signed warrant. CONTRACTOR shall inform the PO II or designee of the detention placement by 8:00 a.m. the next business day.
- b. Per Diem - During an offender's detention placement, DEPARTMENT will continue payment to CONTRACTOR at the contracted per diem rate to allow CONTRACTOR to "hold" the bed until the offender's return. However, upon determination by DEPARTMENT Hearing Officer that the offender will be returned to prison from the County detention center, CONTRACTOR will discontinue receiving per diem payments for the offender and may immediately fill the bed with another offender.

4. Removal from Facility

Upon request by DEPARTMENT, CONTRACTOR will surrender custody of the offender to a designated officer of DEPARTMENT or law enforcement official. In the event that CONTRACTOR determines that the continued participation of an offender in the program presents an undue threat to community safety or will hinder the orderly operation of the program, CONTRACTOR may request an administrative transfer of that offender out of the Facility. Upon request by CONTRACTOR, when such request is proportionate to the circumstances, DEPARTMENT will take custody of an offender through a designated officer of DEPARTMENT or law enforcement official. DEPARTMENT and CONTRACTOR will conduct a conference and review documentation regarding any program participant whose medical or psychological condition poses an impediment to continuation in the program. DEPARTMENT retains the discretion to determine the appropriate placement of the program participant. Under no circumstances will CONTRACTOR transfer any offender from the Facility until DEPARTMENT has authorized the transfer and made arrangements to take the offender into custody.

F. FACILITY MANAGEMENT

1. CONTRACTOR shall provide offenders with an environment that complies with local, state, and federal health and safety laws and regulations and treatment goals. CONTRACTOR shall maintain records of inspections by local, state and federal authorities and conduct annual and quarterly inspections as recommended by the authority having jurisdiction or if applicable, as

specified by the equipment manufacturer. CONTRACTOR will forward reports of violation to DEPARTMENT within five (5) working days of their receipt, along with subsequent plans of correction and final agency disposition with regard to the report of violation. DEPARTMENT reserves the right to request documentation of the Facility's inspection reports on an annual basis or more frequently as needed.

2. CONTRACTOR shall provide furnishings, fixtures, and equipment to accommodate all offenders.
3. CONTRACTOR shall require offenders to maintain their living quarters as defined in writing and provided to offenders at orientation. CONTRACTOR shall document that these responsibilities do not constitute full-time, reimbursable work, but are an integral part of the therapeutic treatment.
4. CONTRACTOR shall regulate the use and location of noise-producing equipment and appliances, such as televisions, radios, or other audio or video players to avoid interference with therapeutic activities of the program or offender privacy.
5. CONTRACTOR shall retain 10% of the total population capacity as single rooms to be used as an incentive or reward for positive offender behavior as offender's progress into the third and final Relapse Prevention and Transfer Planning phase of the Program.
6. CONTRACTOR must provide DEPARTMENT with sufficient space at the Facility for at least one Department staff position (i.e. Contract Monitor or Institutional Probation and Parole Officer (IPPO)). DEPARTMENT will provide office furnishings and telecommunications equipment for this position. Maintenance and cleaning of these offices will be the responsibility of DEPARTMENT. Utility costs and other indirect costs will be CONTRACTOR'S responsibility.
7. Subject to reasonable restrictions set forth in written policies and procedures of the Facility, CONTRACTOR must provide offenders with:
 - a. suitable toilet and bathing facilities;
 - b. well-ventilated, uncrowded living space in single or multiple-occupancy rooms;
 - c. adequate space to store clothing and personal property, including lockable space; and
 - d. furnished areas that provide for conversations with family, friends, or therapists or where the offender may be alone; and a full range of social activities for all offenders, from two-person conversations to group activities.

G. OFFENDER TRAVEL

DEPARTMENT will be responsible for initial transportation of offenders to the Facility and transportation of offenders to another correctional facility. CONTRACTOR is responsible for all other intermediary transportation (i.e., courts, medical, etc.) and security functions. Standard

vehicles with a minimum of two staff present can be used to transport offenders for medical appointments, etc.

H. OFFENDER RECORDS/FILES

1. After admission of an offender into the Program, CONTRACTOR will establish and maintain appropriate documents and files that will be stored and secured in a locked cabinet within a locked room in the Program office area. File management shall occur, as follows:

a. Clinical Files

Information to be kept in the clinical files will include, but is not limited to:

- Offender course completion flow chart
- Initial Needs Assessment and subsequent on-going assessments conducted during an offender's stay
- Treatment plan
- Intake Assessment
- Admission Agreement
- Disclosure consent form
- Offender curriculum/course progress form
- Individualized progress plan/report
- Individualized Transfer and Aftercare plan
- Rules and measures for progressing from phase to phase
- Confidentiality statement
- Documentation of offender eligibility
- Contain a final written case summary of the offender's performance in the Program

b. Medical Files

Medical files will be maintained and secured separately from all other files. Information to be kept in the medical files will include, but is not limited to:

- Results of Physical Exam and Lab
- Documentation of health care services provided and complaints
- Medication records
- Information from other health care facilities

c. File Security

CONTRACTOR agrees that offender file materials shall:

- Be kept in a secure area.
- Not be copied. However, in the event that a community agency providing treatment to an offender requires access to that offender's files, the copying and distribution of those files will be permitted given appropriate release forms and signatures.

- Be returned to DEPARTMENT upon the date of offender release from the Program – if generated by, and initially received from, DEPARTMENT.
 - Be confidential via written policy.
 - Be made available to DEPARTMENT.
 - If maintained electronically, be scrubbed in accordance with United States Department of Defense and State of Montana, Information Services Division standards.
 - Be appropriately encrypted if sent via electronic mail.
2. In accordance with DOC 1.5.6, Offender Records Access and Release and P&P 40-6 Case Records Management, CONTRACTOR shall protect offender records as confidential and not allow other offenders access to view or handle offender records. Offenders may make written requests to review file materials and may be granted access to review non-confidential portions of their file. All information to be provided to an offender from a file must be evaluated by a designated CONTRACTOR employee to ensure that release of information will not endanger either the offender or others, or violate the privacy rights of the offender or others. The offender and supervising staff member will sign and date the request. CONTRACTOR shall maintain offender records on-site in a locked, secure area. DEPARTMENT will provide written direction to CONTRACTOR regarding the appropriate release of offender information to outside parties. CONTRACTOR may require a subpoena to release information, if it deems necessary.
 3. With the sole exception of information in the offender records that is necessary to accomplish continuity of care or treatment by a community agency or provider, CONTRACTOR may not copy or disseminate offender records, unless otherwise authorized by law or by DEPARTMENT. In the case of information released for continuity of care or treatment, CONTRACTOR shall obtain consent from the offender in accordance with state and federal law governing confidential information.
 4. CONTRACTOR shall retain offender records for a period of five years from the date of an offender's release from the Facility.

I. UNLAWFUL OFFENDER BEHAVIOR

CONTRACTOR shall report allegations of criminal conduct of offenders to local law enforcement officials and DEPARTMENT. CONTRACTOR shall cooperate with any administrative or criminal investigation regarding an offender. In accordance with P&P 40-2, Offender Informants, under no circumstances may an offender be permitted to act as an operative (i.e. actively engaging in “controlled enforcement” activities that would ordinarily be considered a violation of the law) for law enforcement officials. Allowing offenders to act as informants (i.e. providing confidential information to qualified law enforcement officials) is discouraged by DEPARTMENT and can only occur on a limited and restricted basis with prior written approval from the Adult Community Corrections Division Administrator.

J. RETURNED CUSTODY

DEPARTMENT agrees to assume custody, at reasonable times, of any offender whom DEPARTMENT believes to be unsuitable for treatment in the Program.

L. DISASTERS

CONTRACTOR shall maintain written plans that identify the procedures for meeting disasters. The plans and procedures shall include assignments of tasks and responsibilities, instructions for the use of alarm systems, notification of authorities, use of special emergency equipment, and specifications of escape routes and procedures. The emergency plans and procedures shall be posted at highly visible locations in the Facility and shall be explained to each new offender during orientation. Drills shall be held, and documented, at least quarterly to evaluate the effectiveness of disaster plans and procedures.

L. OFFENDER ABSENCE/ESCAPE

1. CONTRACTOR shall be responsible to prevent escapes from the Facility. CONTRACTOR shall engage in immediate and appropriate action to apprehend escapees until law enforcement authorities have assumed control of the pursuit. CONTRACTOR shall be responsible for all costs associated with the pursuit and capture of an escapee and his transportation back to secure custody in the State of Montana, if CONTRACTOR is found to be negligent by DEPARTMENT. CONTRACTOR shall develop a plan in conjunction with local law enforcement for the apprehension and reporting of escapes from the Facility.
2. CONTRACTOR shall be responsible for all costs incurred by the State or any political subdivision of the State incurred as the result of riots, disturbances, or other natural or human caused events at the Facility.
3. When an offender is unaccounted for and determined to be Absent Without Leave (AWOL), CONTRACTOR shall follow DOC Policy 3.2.2 - Facility Escapes and DOC Policy 1.1.6 – Incident Reporting and Duty Officer System, attached hereto and incorporated by reference herein.
4. Within one (1) hour of determining a male or female offender's escape, CONTRACTOR'S on-duty staff member shall contact the Montana State Prison shift commander by telephone and fax a written Escapee Wanted Form (if electronic photo available), Escape Information Report (Attachment 2 and Attachment A of DOC 3.2.2, respectively), and an Incident Report Form (standard form attached to DOC 1.1.6 noted above) to the Helena Central Office (Contracts Program Manager) and Montana State Prison Investigation Unit, with the following information:
 - a. Name and Adult Offender (AO) number;
 - b. How, when, and where the escape was discovered;
 - c. Circumstance surrounding the escape (i.e., did not show up for work or school, etc.);
 - d. Probable companions;
 - e. Suspected destination and mode of transportation;
 - f. Personal and clothing description; and

- g. Agencies and persons who have been notified.
- 5. If there are extenuating circumstances, the reporting staff person must so indicate to the DEPARTMENT representative. If the circumstance indicates that there is a possibility of the offender returning on his own, DEPARTMENT may use its discretionary power and choose not to issue the escape warrant at that time.
- 6. Montana State Prison is responsible for listing the escapee with the National Crime Information Center (NCIC), issuing the felony warrant and complaint, and the All Points Bulletin (APB). The Interstate Compact Unit is responsible for listing female escapees with the National Crime Information Center on weekends and holidays.
- 7. CONTRACTOR will cooperate fully with instructions from DEPARTMENT and assist in returning the offender to appropriate custody.
- 8. CONTRACTOR will submit an annual report containing escape information to the DEPARTMENT. This report will include offender names, crimes, type of commitment, date of entry and escape, center status or level at time of escape, and will be due by July 30th of each year. DEPARTMENT will provide a program spreadsheet to the CONTRACTOR for use in reporting applicable escape information.

M. FOOD SERVICES

- 1. CONTRACTOR must provide Program Participants with three meals each day, including two hot meals. Meals shall be served at regular meal times during each 24-hour period, with no more than 14 hours between the evening meal and breakfast. Variations may be allowed based on weekend and holiday food demands.
- 2. CONTRACTOR'S breakfast, lunch, and dinner menus must provide a minimum of 63 grams of protein and a minimum of 2,900 calories for each offender during each 24-hour period. These amounts must conform, at a minimum, to the recommended dietary allowances provided by the National Research Council Food and Nutrition Board. The food service area must comply with state and local health regulations.
- 3. Food service staff must develop and publish advance menu plans that are approved by a registered dietician. Copies of all menus served must be kept at the Facility with menu substitutions documented.
- 4. CONTRACTOR must provide the following special diets in accordance with DOC Policy 4.3.2, Menu Planning: low cholesterol; non-pork; modified vegetarian; strict vegetarian; low sodium; low sugar; modified consistency diet for geriatric offenders; and religious and specialized medical diets, including renal, gluten free, liquid, and diabetic diets.
- 5. CONTRACTOR will provide a single menu for staff and offenders. All menu plans will be based on the Recommended Dietary Allowances (RDA) for males/females (as appropriate) aged 25-50 years as provided by the National Research Council Food and Nutrition Board. A nutritionist, dietician, or physician will annually approve the nutritional value of the food served.

6. CONTRACTOR must maintain adequate refrigeration, cooler and dry storage space to keep a minimum one-week food inventory supply on hand at the Facility.
7. The kitchen and the dining area must be adequately ventilated and properly furnished and clean. A Facility supervisor must conduct, and document, routine inspections on a weekly basis.
8. Documentation at the Facility by state or local inspection authorities that food service facilities and equipment meet established governmental health and safety codes must be maintained. Deficiencies must be noted and corrected as quickly as possible and within a reasonable period of time.
9. All food service personnel and/or inmate workers must have clean hands and fingernails; wear hair nets or caps; wear washable garments; be in good health; free from communicable disease and infected open wounds; and must practice hygienic food handling techniques. All foods must be properly stored or disposed of at the completion of each meal.

N. ACCOUNTABILITY

CONTRACTOR shall provide property inventory and control and strict accountability of resident funds and personal belongings.

O. AGENCY SECURITY REGULATIONS

CONTRACTOR will be required to address [in policy], the following security related areas:

- Use of force.
- Offender counts.
- Offender movement control.
- Key and tool control.
- Offender searches.
- Fire life safety.
- Entrance procedures.
- Logs and record keeping systems.

P. OFFENDER MOVEMENT

CONTRACTOR must have a written plan to control movement within and outside of the Facility consistent with DOC Policy 3.1.11, Offender Movement Control. The Facility policy and procedure must account for the whereabouts of the offenders at all times. CONTRACTOR will be required to provide security at all times for offenders assigned to its custody. This includes, but is not limited to: offender counts, court appearances, off-site medical appointments and hospitals stays.

Q. USE OF FORCE

CONTRACTOR shall be allowed to use force only while on the grounds of the Facility, while transporting offenders, and while pursuing escapes from the Facility. CONTRACTOR shall be authorized to use only the level of force that is consistent with DEPARTMENT policies 3.1.8, Use of Force and Restraints; 3.1.9, Use of Chemical Agents and Oleoresin Capsicum (OC); and 3.1.17, Searches and Contraband Control (additional items of contraband may be identified and clearly defined by Program policy). **CONTRACTOR should only use non-lethal force, including OC spray, and shall not use Tasers or Stun guns.**

R. RELIGIOUS ACTIVITIES

CONTRACTOR must provide offenders the opportunity to voluntarily practice their own religious activities, subject only to those limitations necessary to maintain the order and security of the Facility and without interference with Program components. Offenders cannot be required to attend or participate in religious services or discussions.

S. OFFENDER RIGHTS

CONTRACTOR must have policies and procedures in place that are in accordance with DOC Policy 3.3.3, Offender Grievance Procedures. CONTRACTOR must provide DEPARTMENT with copies of all offender grievances monthly, along with statistical information on number and type of grievances received as required by DEPARTMENT.

T. OFFENDER COMMISSARY/CANTEEN/TELEPHONES COMMISSIONS

All Commissary/Canteen/Telephone commissions shall be accounted for separately [by CONTRACTOR] and may only be used to provide services/goods that benefit all offenders at the Facility.

U. OFFENDER COMMISSARY/CANTEEN

CONTRACTOR shall make canteen items available to offenders. Prices charged for items should be comparable to those charged in DEPARTMENT facilities. Separate financial records and accounts must be maintained by CONTRACTOR for all canteen business.

V. FISCAL MANAGEMENT/REPORTING

Annual Reports

CONTRACTOR must, have an independent financial audit conducted annually, at its expense, and submit these to the DOC Contracts Program Manager no later than December 1st of each calendar year.

No Adverse Change

On an annual basis, CONTRACTOR must certify by signature of its authorized representative, that since the date of CONTRACTOR'S most recent financial statements, there has not been any material adverse change in CONTRACTOR'S business or condition, nor has there been any change in the assets or liabilities or financial condition from that reflected in the financial statements which is material to CONTRACTOR'S ability to perform its obligations under this

Contract. If requested, CONTRACTOR agrees to provide DEPARTMENT with a copy of its most recent financial statement, related to this specific Contract.

Program Audits

CONTRACTOR must allow access to Program records, staff, and offenders to enable DEPARTMENT, the Montana Board of Pardons and Parole, the Montana Legislative Auditor or other entities of the State the opportunity to conduct periodic Program reviews and/or Contract audits.

W. INFORMATION TECHNOLOGY

CONTRACTOR shall provide Video Conferencing capabilities that allow for connectivity to the court systems and other correctional facilities and the DOC Central office in Helena.

X. PROGRAM STAFFING

1. Licensure

All Chemical Dependency Counselors providing services for the Program must be licensed, or eligible for Licensing, through the Montana Department of Commerce. Permanent Program employment shall be contingent on counselors being licensed within the first 24 months of employment. The Clinical Director/Treatment Supervisor must be licensed at the time of employment. In addition, a Masters level therapist must be included in the staffing plan. Licensing is not required for Case Managers; however, Case Managers must have a baccalaureate degree.

2. Staffing Pattern

Offerors must submit a staffing pattern (Staff Assignment Schedule) that will demonstrate an adequate number of staff to ensure supervision for the custody, control, and safety of offender's in the Program. The Staff Assignment Schedule shall include 24-hour supervision as well as adequate, qualified staff to provide all required services. Offerors must provide position descriptions for each position designated on the Staff Assignment Schedule.

3. Staff Training

Prior to delivering services, all Program staff must be cross-trained in the design of the Therapeutic Community Model (TC), including the goals, objectives, methods, materials, and procedures to be implemented. All staff will be trained as Program component facilitators in the cognitive restructuring and interpersonal skills training models. CONTRACTOR shall ensure that program staff receives the following type of training:

-
- Therapeutic Community Model methodology, including experiential teambuilding and on-site skills building for clinical staff. This training should be aimed toward promoting "clinical depth" through TC processes, rather than "packaged" training that emphasizes adherence to structures.

Examples of this type training would include training on group process, advanced TC clinical skills, hands-on demonstration of TC processes, etc.

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- Cognitive restructuring curriculum that focus on behavioral change and cognitive models that target criminogenic thinking.
-
- Gender and culture specific training, with particular emphasis on Native American culture.
-
- Training to help staff increase their comfort level with more difficult clinical issues faced when working with offenders

The intent of this Program is to foster pro-social changes in offenders through the use of appropriate staff modeling, effective treatment curriculum and instruction, and a supportive treatment environment. Persons employed by CONTRACTOR to provide these specialized services, therefore, should not exhibit unhealthy or addictive behaviors that may, by observation, confound or otherwise negatively impact the effectiveness of the Program.

4. Background Staff Investigations

CONTRACTOR shall conduct a criminal background investigation of each Program employee or subcontractor prior to allowing access to the Facility. CONTRACTOR shall not employ a person with a felony record without DEPARTMENT approval. Upon DEPARTMENT request, a DEPARTMENT employee shall be allowed to participate with CONTRACTOR in the hiring process (i.e., interview and selection) of key Program staff.

CONTRACTOR shall submit all Facility/Program policy and procedures to DEPARTMENT within thirty (30) days after hiring the first employee.

Y. URINALYSIS SCREENING

In accordance with DEPARTMENT policy on “zero tolerance” of alcohol or drug use in the Program, CONTRACTOR will establish a system of drug testing to ensure an alcohol and drug free environment. Alcohol and drug testing must comply with DOC Policy 3.1.20, Standardized Offender Drug Screening. CONTRACTOR shall conduct regular, random urinalysis (UA) screening of all offenders upon entry to the Facility, and twenty percent (20%) of the population thereafter. On a quarterly basis, CONTRACTOR shall submit reports to the Contract Programs Manager outlining the total number of UA samples taken and tested; how many of these samples were positive; and, the specific substances offenders tested positive for. DEPARTMENT will develop a program spreadsheet for CONTRACTOR to use in reporting urinalysis information. CONTRACTOR will submit a copy of their current Urinalysis Screening Policy to DEPARTMENT by July 30th of each year, or upon policy revision, for DEPARTMENT review and approval.

Z. OFFENDER WORKER POSITIONS

1. CONTRACTOR may request placement of an offender as an offender worker by

submitting to the Contract Programs Manager a work position agreement, signed by the offender, that sets forth a description of the work assignment, compensation, length of assignment in the position, and counseling services to be provided.

2. Offender workers may remain in the position for a maximum of six months, unless otherwise approved by the Contract Programs Manager.
3. CONTRACTOR shall provide offender workers room and board exempt from the service charges that apply to traditional program participants. During the offender's placement in an offender work position, CONTRACTOR may charge DEPARTMENT the daily per diem rate assessed regular program participants. Out of this per diem, CONTRACTOR shall pay offender workers a minimum of \$6.00 and a maximum of \$12.00 per day for their work.
4. Offender workers shall follow all Facility rules, regulations, and provisions of their offender work position agreement, and be subject to the same disciplinary procedures as traditional program participants.
5. DEPARTMENT will cover the cost of an offender worker's necessary medical, dental and psychiatric expenses, if CONTRACTOR has submitted a request to the DEPARTMENT'S Managed Care Coordinator for prior review and approval is deemed appropriate. In an emergency, CONTRACTOR may proceed with the necessary treatment without prior authorization, but shall contact the Managed Care Coordinator as soon as possible to furnish full information regarding the nature of the illness, the type of treatment to be provided, and the estimated costs thereof. The Managed Care Coordinator will review each case individually.

AA. OFFENDER CLOTHING

CONTRACTOR shall provide offenders with adequate clothing, similar in color and design for each respective phase of the Program. Offenders in Phase III of the program may be permitted to wear their own personal clothing as an incentive or reward for positive behavior.

BB. LENGTH OF STAY

Offenders shall not reside in the Facility for more than 270 days without prior written approval from the Contract Programs Manager. Shorter length of stays will be considered upon submission of written justification from CONTRACTOR and subsequent approval by DEPARTMENT.

CC. OFFENDER FEES

1. CONTRACTOR shall inform offenders in writing at the time of orientation of all applicable fees. CONTRACTOR shall submit for DEPARTMENT approval, a schedule covering all applicable charges and fees. CONTRACTOR agrees to provide offenders and DEPARTMENT 90 days advance notice of adjustments to the fee schedule.
2. CONTRACTOR may require an offender to pay for damage to the Facility, its equipment, furnishings, and fixtures.

3. CONTRACTOR has the discretion to forgive all charges, or any portion thereof, based on CONTRACTOR'S assessment of the offender's ability to pay.
4. In reference to MCA 45-9-102, Criminal Possession of Dangerous Drugs, the Court shall, as a condition of probation pursuant to subsection (5)(a), order offenders to pay the cost of imprisonment, probation, and any methamphetamine treatment if the offender is financially able to pay the costs. If the Court orders that the offender pay for the cost of his/her methamphetamine treatment, and the CONTRACTOR receives legal judgment noting this requirement, the CONTRACTOR will ensure that this requirement is noted in the offender's discharge summary and communicated to the receiving prerelease center and/or supervising Probation and Parole Officer for follow-up and collection.

DD. STATISTICAL REPORTS AND PERFORMANCE MEASURES

CONTRACTOR must provide both quantitative and qualitative measures of the program's performance and effectiveness as determined by DEPARTMENT. CONTRACTOR must generate management reports that accurately track these measures and submit these reports [electronically] to DEPARTMENT on a quarterly basis. Upon reasonable request of DEPARTMENT, CONTRACTOR agrees to prepare statistical reports/reviews of the program. CONTRACTOR agrees not to release said information without approval of DEPARTMENT.

Performance measures must be congruent with the goals listed below:

- To increase the methamphetamine addicted offender's level of knowledge of chemical dependency and the mental, physical, and environmental consequences of methamphetamine use.
- To provide offenders with treatment and ancillary services to create pro-social change and reduce anti-social thinking, criminal behavior patterns, and the negative effects of chemical dependency - particularly as it relates to methamphetamine use.
- To promote responsibility and accountability of offenders by providing an experiential, pro-social community environment.
- To decrease offender drug and alcohol use for five (5) continuous years after completion of the methamphetamine treatment program.
- To decrease the proportion of offenders [who participate in the Program] from violating probation, parole, or conditional release.
- To decrease the incidence of further misdemeanor or felony convictions.

Prior to opening of the Facility, CONTRACTOR agrees to cooperate with DEPARTMENT or its assigned agent(s) to formulate written criteria to be used for the specific performance/process measurement of the goals listed above. CONTRACTOR and DEPARTMENT agree to formally amend this Contract to include this agreed upon criteria.

EE. DNA TESTING

CONTRACTOR will comply with DOC Policy 1.5.13, DNA Testing/Collection of Biological

Samples, attached and incorporated herein by reference, by following the procedures outlined within the policy or utilizing a community resource to obtain DNA samples from designated offenders. Upon an applicable offender's release or return to custody, CONTRACTOR will forward written documentation that sampling was conducted to the supervising Probation and Parole Office or appropriate facility.

FF. EMERGENCY PREPAREDNESS & DISASTER PLAN

CONTRACTOR must have a written Emergency Response (Emergency Preparedness) Plan including appropriate procedures. DEPARTMENT will assist if necessary to ensure the Plan and procedures comply with the DEPARTMENT'S Emergency Preparedness Policies. CONTRACTOR must have a written plan for dealing with offender disturbances and hostage taking. CONTRACTOR must have a signed Mutual Aid Agreement in place with local law enforcement, fire and health agencies.

GG. WORK STOPPAGES

CONTRACTOR shall develop and maintain written plans providing for the continued operation of the Program in the event of an employee work stoppage.

HH. ASSUMED CONTROL

CONTRACTOR must provide [for DEPARTMENT approval] detailed plans that DEPARTMENT may use to assume control of the Program. Detailed plans shall include, but are not limited to, the process of transferring the Program operation from CONTRACTOR to DEPARTMENT upon termination of the Contract.

3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of services provided pursuant to Section 2, in the following manner:

1. For the contract period ending June 30, 2009, CONTRACTOR will invoice DEPARTMENT for up to **forty (40) female** offenders at the rate of **\$125.00 per offender, per day**. The **maximum** amount paid under this Contract for **FY 2007/2008 is \$2,275,000.00** and **\$1,825,000.00 for FY 2009**, unless otherwise authorized by DEPARTMENT.
2. Within fifteen (15) working days following the last day of each calendar month, CONTRACTOR shall invoice DEPARTMENT for contractual services rendered during the preceding month. Unless such invoice is subjected to a special review or audit, CONTRACTOR is entitled to payment, or written explanation of exception, within 15 days of receipt of a correct invoice by DEPARTMENT.
3. DEPARTMENT may withhold payments to CONTRACTOR for failure to perform in accordance with the terms of this Contract. However, prior to withholding payment, DEPARTMENT shall notify CONTRACTOR and the Montana Facility Finance Authority (MFFA), in writing, of its failure to perform. The notice shall specify acts or omissions constituting the default. If CONTRACTOR fails to remedy the default or submit an action plan deemed acceptable by DEPARTMENT within 60 days of receiving notice, DEPARTMENT may

withhold payments.

4. CONTRACTOR shall reference the Contract number on all invoices and correspondence pertaining to this Contract.
5. The conditions of reimbursement outlined above are effective for Fiscal Years 2007, 2008, and 2009. CONTRACTOR retains the right to renegotiate for Fiscal Year 2010 with the guarantee that compensation by DEPARTMENT will not be less than compensation paid in Fiscal Year 2009, subject to availability of funding. While the parties are renegotiating CONTRACTOR'S compensation, DEPARTMENT shall continue to compensate CONTRACTOR at the same rate as the previous fiscal year. After renegotiations have concluded, DEPARTMENT shall compensate CONTRACTOR at the new compensation rate retroactive to the beginning of the respective fiscal year.
6. In order to provide financing for construction of CONTRACTOR'S Facility, CONTRACTOR requested the issuance of **\$5,085,000.00** in tax-exempt bonds (the "Series 2006 Bonds") by the MFFA and a loan of the proceeds of the Series 2006 Bonds to CONTRACTOR pursuant to Title 90 Chapter 7, Montana Code Annotated. As security for the Series 2006 Bonds, the MFFA required a written contract for services between CONTRACTOR and DEPARTMENT, which required DEPARTMENT to commit to the following provisions during the term of the Bonds:
 - a. DEPARTMENT agrees to provide payment on behalf of CONTRACTOR for the use of, and for services to be provided by, CONTRACTOR at the Facility sufficient in each Fiscal Year to produce Income Available for Debt Service equal to at least 115% of the total principal and interest payments on the Series 2006 Bonds during such Fiscal Year. In order to assure compliance with this covenant DEPARTMENT will:
 - (i) review the contractor's yearly (audited) and quarterly (unaudited) financial statements (which the contractor agrees to timely provide to DEPARTMENT for such review) to determine compliance with the Debt Service Coverage Requirement; and
 - (ii) As part of the compensation and deducted monthly from DEPARTMENT'S regular payments to CONTRACTOR, on August 15th of each year, DEPARTMENT shall pay on behalf of CONTRACTOR, to the U.S. Bank National Association, as Trustee (the "Trustee") of the Series 2006 Bonds under an Indenture of Trust dated as of August 1, 2006 (the "Indenture"), the following amounts:
 - a. the principal and interest on the Series 2006 Bonds coming due in the following 12 months;
 - b. the Program Expenses (as defined in the Indenture);
 - c. any amounts necessary to make the Reserve Fund equal to the Reserve Requirement (as defined in the Indenture);
 - d. any amounts due under a Capital Reserve Account Agreement between the MFFA and the Board of Investments (as defined in the Indenture); and

- e. any amounts necessary to be paid into the Rebate Fund (as defined in the Indenture); less any funds accumulated in the Bond Fund (as defined in the Indenture).

7. If CONTRACTOR requests additional financing from MFFA for additions or improvements to the Facility through the issuance of additional bonds issued under the Indenture and secured with the Series 2006 Bonds, on a parity basis, by the provisions of this contract, then the commitments of DEPARTMENT referenced in Section 3(6) shall also apply to such additional bonds.

4. TIME OF PERFORMANCE

This Contract shall take effect upon receipt of final Contract signature and shall terminate twenty (20) years from the actual opening date of the Facility, which is anticipated to occur on or about **June 1, 2007**. This contract, including any renewals, may not exceed a total of twenty (20) years, as mutually agreed by CONTRACTOR and DEPARTMENT.

On or about March 1, 2009, and every two years thereafter during the term of this Contract, the parties will meet to review the number of beds to be provided and the compensation rates described in Section 3 of this Contract and, upon presentation of reasonable documentation, agree to amend the Contract as necessary.

5. LIAISONS AND NOTICE

1. The Adult Community Corrections Division Contract Programs Manager (444-4910), 1539 11th Avenue, P.O. Box 201301, Helena MT 59620-1301 or successor/designee serves as DEPARTMENT liaison.
2. Mike Ruppert, Chief Executive Officer (443-2343), Boyd Andrew Community Services, PO Box 1153, Helena MT 59624 or successor serves as CONTRACTOR liaison.
3. Montana Facility Finance Authority, Executive Director, PO Box 200506, Helena MT 59620.
4. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (1) and (2) above and when required herein, to (3) above and mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

6. OWNERSHIP AND PUBLICATION OF MATERIALS

Any programs, processes, or other intellectual property that CONTRACTOR develops or creates as part of its performance of services hereunder shall remain the sole property of CONTRACTOR.

7. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither CONTRACTOR nor its employees are employees of the state. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, CONTRACTORS are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana.

CONTRACTOR shall provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and maintain such insurance, exemption, or corporate officer status for the duration of the agreement. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Fiscal Bureau, Attn: Contracts Manager, P.O. Box 201301, Helena, MT 59620-1301.

8. HOLD HARMLESS AND INDEMNIFICATION

CONTRACTOR agrees to defend and indemnify DEPARTMENT, its appointed officials, agents, and employees, while acting in the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of CONTRACTOR'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of CONTRACTOR its agents, employees, subcontractors representatives under this Contract, except that arising out of the sole negligence of DEPARTMENT, its appointed officials, agents, and employees.

DEPARTMENT agrees to defend and indemnify CONTRACTOR, its appointed officials, agents, and employees, while acting in the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of DEPARTMENT'S employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of DEPARTMENT its agents, employees, subcontractors representatives under this Contract, except that arising out of the sole negligence of CONTRACTOR, its appointed officials, agents, and employee.

9. INSURANCE

- 1. General Requirements:** CONTRACTOR shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by CONTRACTOR, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

Primary Insurance: CONTRACTOR'S insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

- 2. Specific Requirements for Commercial General Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$3,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insured's; for liability arising out of activities performed by or

on behalf of CONTRACTOR, including the insured's general supervision of CONTRACTOR; products and completed operations; premises owned, leased, occupied, or used.

3. **Specific Requirements for Automobile Liability:** CONTRACTOR shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors.

Additional Insured Status: The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insured's for automobiles leased, hired, or borrowed by CONTRACTOR.

4. **Specific Requirements for Professional Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$3,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, CONTRACTOR may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, and volunteers; or (2) at the expense of CONTRACTOR, CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: A certificate of insurance from insurer with a Best's rating of no less than A- indicating compliance with the required coverage's has been received by the Montana Department of Corrections, Contracts and Facilities Management Bureau, PO Box 201301, Helena, MT 59620-1301. CONTRACTOR must immediately notify the State of any material change in insurance coverage, such as changes in limits, coverage's, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

10. **CONTRACT PERFORMANCE SECURITY**

CONTRACTOR must provide contract performance security based upon the proposed/accepted size of the Facility using a rate of \$2,500.00 per offender. This Facility will house forty (40) female offenders.

One week prior to opening of the Facility, Contract performance security in the form of a bond in the amount of **\$100,000.00** shall be submitted to the Contracts and Facilities Management Bureau, 1539 11th Avenue, PO Box 201301, Helena MT, 59620-1301. All contract performance security, except bonds,

will be returned to CONTRACTOR after successful completion of the Contract. This security must remain in effect for the entire contract period.

11. PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of CONTRACTOR'S workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that CONTRACTOR'S, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after CONTRACTOR'S, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11) (a), MCA, and falls under the category of nonconstruction services. The booklet containing Montana's 2003 Rates for Nonconstruction Services is attached to this Contract and made a part thereof by reference. This information is also available electronically at the following address: <http://erd.dli.state.mt.us/laborstandard/wagehrprevail.asp>

12. LIQUIDATED DAMAGES

CONTRACTOR was awarded this Contract as a result of a guarantee to begin accepting offenders into the Facility within twelve (12) months of Contract signing. Since actual damages would be difficult to determine, DEPARTMENT reserves the right to assess liquidated damages in the amount of \$500.00 per calendar day (days 1-30); \$1,000.00 per calendar day (days 31-60); and, \$2,000.00 per calendar day (days 61 and beyond) for failure to complete Facility construction within ten (10) months of Contract signing. This sum may be deducted from the CONTRACTOR'S payment for failure to deliver/perform

when specified. No premium will be awarded to the contractor for delivery/performance in advance of the specified time.

13. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

14. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract is subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution.

15. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

CONTRACTOR shall submit all subcontracts directly affecting offender security procedures or treatment needs to the Contract Programs Manager for review and approval at least 30 days prior to beginning performance of the contract. DEPARTMENT shall submit its approval or revision recommendations in writing to CONTRACTOR.

16. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

17. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Prison Rape Elimination Act of 2003, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

CONTRACTOR will ensure that a criminal background investigation, including a CJIN and NCIC check, is conducted on each Facility employee, treatment or security subcontractor, or volunteer, prior to allowing access to offender records or personal authority over an offender. CONTRACTOR shall not employ a person with a felony record without DEPARTMENT approval.

18. TERMINATION AND DEFAULT

DEPARTMENT may terminate this contract for the following reasons:

- 1. Reduced Funding** - At its sole discretion, DEPARTMENT may terminate or reduce the scope of this Contract if available funding is reduced for any reason.
 - a. DEPARTMENT agrees to notify the MFFA and Trustee within 15 days of the DEPARTMENT'S decision if, for any reason, DEPARTMENT decides not to seek funding for the Methamphetamine Treatment Program through the executive budget process.
- 2. CONTRACTOR Insolvency** – If CONTRACTOR believes it is currently unable, or will soon be unable, to provide the required quality or quantity of services, then CONTRACTOR shall immediately notify DEPARTMENT and MFFA of this determination. Upon such notification, the parties (including a representative of MFFA) shall meet to determine whether such inability requires termination or modification of this Contract.
- 3. Failure to Perform** - DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract, subject to the notice and right to cure provisions set out in Section 3(3) COMPENSATION/BILLING above.

19. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

20. LICENSURE

CONTRACTOR agrees to maintain and provide as requested, documentation to confirm registration, licensure, or certification of any person performing services under this Contract that requires such registration, licensure, or certification.

21. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

22. SEVERABILITY

A declaration by any court, or any other binding legal source, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

23. NOTICE OF POLICY CHANGES

DEPARTMENT shall notify CONTRACTOR whenever DEPARTMENT has proposed or considered administrative rule changes or policy changes which could affect CONTRACTOR'S financial operation or the intent of this contract. Should this occur, DEPARTMENT agrees to discuss these changes with CONTRACTOR and/or negotiate appropriate changes to this contract prior to implementation of the rule or policy. CONTRACTOR must comply with all other rule or policy changes and DEPARTMENT shall transmit written copies of any such changes within ten (10) working days of their adoption.

24. MISCELLANEOUS MATTERS

The parties agree that electronic transmissions, such as e-mails, may be used and considered as written transmissions under the terms of this Contract. The parties agree that where there are references to statutes, policies or administrative rules, those references shall automatically be amended to refer to renumbered statutes, policies, or administrative rules as appropriate.

25. APPROVAL OF CONTRACT BY MFFA SOLELY FOR FINANCING PURPOSES

Pursuant to Section 90-7-226, Montana Code Annotated, MFFA is required to approve this Contract if MFFA is involved in the financing of the proposed project. Other than as required by the above-referenced statute, the MFFA does not assume any responsibility or liability under this Contract.

26. COMPLETED CONTRACT

CONTRACTOR cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Contracts and Facility Management Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

DEPARTMENT

CONTRACTOR

Mike Ferriter, Director
Montana Department of Corrections

Mike Rupert, Chief Executive Officer
Boyd Andrew Community Services

Date

Date

Approved for Legal Content by:

Legal Counsel
Department of Corrections

Date

Approved for Montana Facility Finance Authority by:

Executive Director

Date

Approved by Legislative Audit Division: See attached memo dated August 7, 2006.